

osteoarthritis component predisposing him to this condition. Dr. Peterson further testified that even if claimant's prolonged standing on hard surfaces at work were eliminated, if he continued to engage in prolonged standing in performing his normal day-to-day activities, his condition would either progress or stay the same. In addition, if claimant were to stand on a rubber mat at work, rather than on hard surfaces for prolonged periods, then that would probably help keep his condition from getting worse. At page 19 of his deposition, Dr. Peterson was asked the following questions and gave the following answers on cross-examination:

"Q. If he was standing on a rubber mat but the problem nonetheless continued to get worse and he was engaged in prolonged standing during his normal day-to-day activities, would that give you some kind of idea of what activity was causing it to get worse?

A. I suppose in that scenario you might look at it more as a degenerative condition or due to the osteoarthritis then.

Q. As opposed to the work?

A. As opposed to work or trauma and activity, yes."

Respondent points to the above response to his hypothetical question as support for the position that claimant's condition is due to his natural aging process or normal activities of day-to-day living as opposed to his activity at work. However, the Appeals Board does not find the hypothetical question asked Dr. Peterson to be entirely consistent with the facts. Claimant testified that he works on concrete eight (8) hours a day. He describes the onset of injury to both feet during the summer of 1993. The problem started out on the bottom of both feet and progressed to the top of both feet where the ankle bone and the foot bones come together. He describes it as a constant pain from standing. He states that when he is not standing on hard surfaces at work, such as when he is off work for two (2) or three (3) days, the severity of his pain decreases. He denies prolonged standing on hard surfaces outside of work. He does have a small work area in his garage but this is carpeted. He also does some painting on a seasonal basis. During the summer he paints houses and small projects evenings and weekends. Although he does some work on ladders, he does not generally stand on concrete or hard surfaces. Approximately June 1994 he was provided with a rubber mat to stand on at work which he described as being about one-half inch thick and eighteen (18) or twenty (20) inches wide. He said that the mat helped some but that he is required to work off of the mat much of the time.

The Appeals Board finds that the work claimant performed for the respondent caused an aggravation of his degenerative or osteoarthritic condition. It is well settled in this State that an accidental injury is compensable where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction. Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984); Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976).

Having found, based upon the evidence in the record as it now exists, that claimant has met his burden of proving accidental injury on the dates alleged, and that said injury

arose out of and in the course of his employment with the respondent, the Order of the Administrative Law Judge is affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 15, 1995 Preliminary Hearing Order of Administrative Law Judge George R. Robertson should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Scott M. Price, Salina, KS
Terry J. Torline, Wichita, KS
Jeffrey E. King, Salina, KS
George R. Robertson, Administrative Law Judge
George Gomez, Director